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No. 01-411

IN THE

Supreme Court of the United States

JEFFREY ALAN HARRIS,

Petitioner,

v.

GASTON GALJOUR and PAT GALJOUR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA FIRST CIRCUIT COURT OF APPEAL

BRIEF IN OPPOSITION FOR RESPONDENTS GASTON GALJOUR AND PAT GALJOUR

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TABLE OF CONTENTS

	Page
Table of Cited Authorities	ii
Respondents' Statement of the Case	1
Reasons for Denying the Writ	5
I. The State Appellate Court Decision Does Not Conflict With This Court's Ruling In *Troxel v. Granville*	6
II. The Statute Is Not Unconstitutional "As Applied": The Record Below Reveals That Petitioner Denied Having A Problem With The Grandparents' Visitation And That Every Condition Regarding Visitation imposed By Petitioner Was Granted	20
III. This Case Does Not Present With Far-Reaching Implications	25
Conclusion	27

TABLE OF CITED AUTHORITIES

Page

Cases:

In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1957) 15

Ginsberg v. New York, 390 U.S. 629, 88 S. Ct. 1274, 20 L. Ed. 2d 195 (1968) 14

Michael H. v. Gerald D., 491 U.S. 110, 109 S. Ct. 2333, 105 L. Ed. 2d 91 (1989) 19

Reinhardt v. Reinhardt, 97-1889 (La. App. 1 Cir. 9/25/98), 720 So.2d 78, *writ denied*, 98-2697 (La. 12/18/98), 734 So.2d 635, *certiorari denied*, 526 U.S.1114, 119 S. Ct. 1761, 143 L. Ed. 2d 792 (1999) 18, 26

Soloco, Inc. v. Dupree, 97-1256 (La. 1/12/98), 707 So.2d 12 (1998) 18

Tinker v. Demoines Independent Community School District, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969) 14

Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (U.S. Wash. 2000) ..... *passim*

United States Constitution:

First Amendment 14

Fourteenth Amendment 5

Cited Authorities

Page

Statutes:

La. R.S. 9:344 ..... 5, 13

La. R.S. 9:344A 1, 6, 8, 13, 17, 19

Washington Rev. Code § 26.10.160(3) 6

Rule:

United States Supreme Court Rule 15 1

Other Authorities

La. Civil Code Article 136 17

La. Civil Code Article 136(B) 17, 18, 19

La. Civil Code Article 229 .....25, 26

RESPONDENTS' STATEMENT OF THE CASE

Respondents, Gaston and Pat Galjour, the maternal grandparents of the minor child Camille Harris, respectfully submit their statement of the case pursuant to *Rule 15* of the *Rules of the Supreme Court of the United States*. Respondents take issue with petitioner's *Statement of the Case* as much of what is stated is argument and/or opinion and is not necessarily a factual summary of the proceedings below. Accordingly, respondents submit this statement, together with record references.

Additionally, there is a somewhat confusing chronology of events due to the fact that the initial proceedings were brought by Juanita and Mark Galjour, the maternal aunt and uncle of the minor child Camille Harris, pursuant to other statutory authority not before this Court. Respondents, the maternal grandparents, were allowed to intervene in the proceedings and to assert their own claim for visitation rights, pursuant to the statute at issue, La. R.S. 9:344A, commonly known as the grandparent visitation statute.

Up to the point in time that the grandparents intervened, they had been exercising visitation of Camille contemporaneously with the maternal aunt and uncle, as the aunt and uncle were parties to a Consent Judgment (discussed below) of visitation involving the minor child, Camille Harris. The maternal aunt and uncle lived in a house which adjoined that of respondents.

The grandmother, respondent Pat Galjour, testified at the April 12, 2000 trial, referenced below, about the nature of the relationship with her granddaughter, Camille, and stated that ever since Camille was born, she and her husband had

been involved with Camille, helping Jeffrey Harris (the petitioner) raise and take care of Camille because the child's mother was ill. (Record, p. 163, lines 23-26).

The grandmother also stated that she spent "pretty much" every other week with Camille when Jeffrey was offshore, and even during some of the time when he was there because the mother was receiving treatment at the hospital. (Record, p. 163, lines 28-320).

Petitioner Jeffrey Allen Harris is the natural father of the minor child, Camille Megan Harris, who was born on April 2, 1996. Trisha Harris was the natural mother of Camille who died on April 22, 1997 of an inoperable brain tumor. (Record, p. 164, lines 1-5). Prior to her death, Trisha Harris had instituted a divorce and child custody action as referenced in the *Petition for Emergency Ex Parte Custody Order and for Injunctive Relief*, found at p. 1 of the Record.

Mark Galjour and Juanita Galjour are the maternal uncle and aunt of the minor, Camille. As found at p. 2 of the Record, on April 24, 1997, after Trisha died on April 23, 1997, Mark and Juanita filed a *Petition for Emergency Ex Parte Custody Order and for Injunctive Relief.*

In the aforementioned petition, the maternal aunt and uncle alleged that Jeffrey Harris was employed by Shell Offshore, Inc., worked offshore seven days on/seven days off, and was accordingly unable to properly care for Camille Harris (Record, p. 3), that he had made no inquiries concerning Camille Harris for the entire time that Camille Harris had been staying with the maternal aunt and uncle and had not provided for or supported Camille Harris from the time of the filing of Trisha Harris' divorce petition (Record, p. 4).

Further, Juanita and Mark Galjour alleged, as was alleged in Trisha Harris' divorce petition, that Jeffrey Harris appeared to have an alcohol abuse problem which had "caused him to interact angrily and inappropriately to Camille Harris" (Record, p. 4). The ex parte request for sole custody brought by the aunt and uncle was denied. The Court further ordered a meeting with the social worker on May 13, 1997 (Record, p. 8).

Thereafter, a *Consent Judgment* was executed by Jeffrey Harris and the aunt and uncle on November 3, 1997, whereby Juanita and Mark Galjour were given substantial visitation rights (Record, p. 11). From May of 1997, when they had all met at court for a meeting with the social worker, up to the execution of the *Consent Judgment* in November of 1997, the aunt and uncle and the father had been following basically the same visitation schedule as was stated in the *Consent Judgment*, as admitted by Jeffrey Harris in the hearing on April 12, 2000 (Record, p. 134, lines 29-32).

The *Consent Judgment* provided visitation to Mark and Juanita Galjour for one consecutive week period of time every month, as long as Jeffrey Harris continued to work offshore in excess of seven calendar days per month. Further, the *Consent Judgment* contained a provision that should Jeffrey Harris modify his work schedule to provide for one week or less of offshore work, Mark Galjour and Juanita Galjour "shall be allowed visitation with the minor child for seven days out of every month, not necessarily consecutive and not necessarily overnight" with the specific days to be at the discretion of Jeffrey Harris to be coordinated with the schedule of Mark and Juanita.

On September 27, 1999, Jeffrey Harris filed a rule to terminate visitation and did not allow Mark and Juanita Galjour to see Camille. On November 3, 1999, they filed a *Rule for Contempt* for Jeffrey Harris' denial of their visitation rights as provided in the November 3, 1997 *Consent Judgment* and rule for change of custody and for court-appointed evaluation (Record, pp. 19-30).

On November 24, 1999, without taking any testimony nor any evidence of any kind, the trial court summarily suspended their visitation rights under the November 3, 1997 judgment (Record, p. 46). The trial court did recommend, however, that Jeffrey Harris *voluntarily* permit the maternal aunt and uncle to see Camille pending further orders of the Court.

Thereafter, Mark and Juanita Galjour filed a *Motion for a New Trial* which was set down for hearing on January 6, 2000 (Record, p. 49). The matters set down for the Court on January 6, 2000, in addition to the *Motion for New Trial*, were Jeffrey Harris' *Rule to Terminate Visitation*, the Galjours' *Rule for Court-Appointed Evaluation*, and the *Rule for Contempt* filed by the Galjours.

The maternal aunt and uncle attempted a resolution of the matters with Jeffrey Harris and they all acknowledged and consented to allow an intervention to be filed by respondents, the maternal grandparents, as read into the court record on that same day. A transcript of that proceeding is found in the Record at pp. 81 through 88. Respondents thereafter filed a *Motion to Intervene* on January 25, 2000 (Record, pp. 74 and 75).

On March 8, 2000, Jeffrey Harris filed *Peremptory Exceptions of No Right of Action* as to Mark and Juanita Galjour and a *Peremptory Exception of Lack of Constitutionality as to La. R.S. 9:344*, as to the respondents Gaston and Pat Galjour, the grandparents.

A trial was held on April 12, 2000, wherein the *Exception of No Right of Action* as against Mark and Juanita Galjour was maintained while the *Peremptory Exception of Lack of Constitutionality as to La. R.S. 9:344* was denied by the trial judge (Record, p. 131). The Louisiana First Circuit Court of Appeal affirmed that decision. Thereafter, the Louisiana Supreme Court unanimously denied writs.

REASONS FOR DENYING THE WRIT

The inextricably intertwined questions presented by the petition are: (1) whether grandparent visitation, pursuant to Louisiana's grandparent visitation statute, is an unconstitutional infringement of a fit parent's right of custody and control under the Fourteenth Amendment of the Constitution and (2) whether Louisiana's grandparent visitation statute creates a facially unconstitutional violation of the Due Process Clause of the Fourteenth Amendment of the Constitution.

As stated above, the Louisiana Supreme Court unanimously denied petitioner's writs from a ruling by the First Circuit Court of Appeal which held that the Louisiana grandparent visitation statute was constitutional in light of this Court's ruling in *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (U.S. Wash. 2000).

First, the Court of Appeal found that Louisiana's statute was much more narrowly drawn than the Washington state statute in *Troxel*. In further distinguishing the case before it with the *Troxel* case, the Court of Appeal also ruled that the transcript of the hearing reflected that the Petitioner herein, Jeffrey Harris, emphatically denied having a problem with the grandparents seeing Camille and that additionally, the transcript revealed that "the trial court went to great lengths in acceding to each condition of visitation imposed by Jeffrey." (Petitioner's *Writ of Certiorari*, Appendix A, page 17a). Accordingly, this Court should deny Petitioner's Writ of Certiorari.

I.

THE STATE APPELLATE COURT DECISION DOES NOT CONFLICT WITH THIS COURT'S RULING IN *TROXEL v. GRANVILLE*

The First Circuit Court of Appeal fully considered this Court's decision in *Troxel*. The petitioner Jeffrey Harris relies solely upon this Court's ruling in *Troxel* as the basis for his challenge to the constitutionality of Louisiana Revised Statutes 9:344A. Yet a careful review of the *Troxel* decision reveals marked distinctions to the case at bar.

First, this Court struck down the Washington state statute on the basis of over-breadth alone. The statute in question stated that: "[A]ny person may petition the court for visitation rights at any time" and the Court may grant such visitation rights whenever "visitation may serve the best interest of the child." § 26.10.160(3). This Court in *Troxel*, at p. 2064 held:

Neither the Washington non-parental visitation statute generally – which places no limits on either the persons who may petition for visitation or the circumstances in which such a petition may be granted – nor the Superior Court in this specific case required anything more. Accordingly, we hold that § 26.10.160(3), as applied in this case, is unconstitutional. Because we rest our decision on the sweeping breadth of § 26.10.160(3) and the application of that broad, unlimited power in this case, we do not consider the primary constitutional question passed on by the Washington Supreme Court – whether the due process clause requires all non-parental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation. We do not and need not define today the precise scope of the parental due process right in the visitation context. In this respect, we agree with Justice Kennedy that the constitutionality of any standard for awarding visitation turns on the specific manner in which that standard is applied and that the constitutional protections in this area are best elaborated with care.

And post at 2079 (dissenting opinion): Because much state court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold specific non-parental visitation statutes violate the due process clause as a per se matter.

In marked contrast to the Washington state statute, the Louisiana statute in question, La. R.S. 9:344A, provides:

> If one of the parties to a marriage dies, is interdicted or incarcerated, and there is a minor child or children of such marriage, the parents of the deceased, interdicted or incarcerated party without such custody of such minor child or children may have reasonable visitation rights to the child or children of the marriage during their minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child or children.

This Court's sole basis for striking down the Washington State statute in *Troxel* was that it allowed *any* person to petition for forced visitation of a child at *any* time with the only requirement being that the visitation serve the best interest of the child. 120 S. Ct. at 2059. This is not so in Louisiana.

First, the Louisiana statute imposes the requirement that one of the parties to a marriage must be deceased, interdicted or incarcerated before any visitation of a minor child or children of such marriage can be sought. Second, a person seeking visitation must be a parent of the deceased, interdicted or incarcerated party without such custody. Third, the court has the discretion to decide, even if the other two conditions are met, whether such visitation is in the best interests of the child (children) involved.

Even assuming for the moment that this Court were to look beyond the over-breadth argument of *Troxel*, it would find that both the trial court and the First Circuit Court of

Appeal properly applied the three-part test of the statute and balanced all of the parties' competing interests, including those of the child. Therefore, petitioner's writ should be denied.

Both the Galjour grandparents and the Galjour maternal uncle and aunt had a long-standing familial bond since birth with the minor child Camille, a bond exercised on virtually a daily basis due to the mother's immediately developing a terminal condition at the child's birth, coupled with the fact that the child's father worked offshore. These two factors created a situation whereby the child Camille, from infancy, naturally bonded with her maternal grandparents and her maternal uncle and aunt. Those bonds should not be torn as under the guise of constitutionality: the statute is not overly broad and should remain intact.

Further, the trial court took Jeffrey Harris' desires not only into consideration but used them to fashion her order, which is what this Court in *Troxel* indicated was necessary.

Justice O'Connor in the majority opinion stated:

> In an ideal world parents might always seek to cultivate the bonds between grandparents and their grandchildren. Needless to say, however, our world is far from perfect, and in it the decision whether such an inter-generational relationship would be beneficial in any specific cases for a parent to make in the first instance and, if a fit parent's decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination. 120 S. Ct. at 2062.

Likewise, in Justice Stevens' dissent, he traced the history of many of the cases which have come before this Court regarding parent/children relationships. That history should provide ample guidance for this Court to uphold the constitutionality of the Louisiana statute.

Justice Stevens stated:

> The court today wisely declines to endorse either the holding or the reasoning of the Supreme Court of Washington. In my opinion, the court would have been even wiser to deny certiorari. Given the problematic character of the trial court's decision and the uniqueness of the Washington statute, there was no pressing need to review a State Supreme Court decision that merely requires the state legislature to draft a better statute. 120 S.Ct. at 2068.

Justice Stevens further opined that:

> The second key aspect of the Washington Supreme Court's holding – that the Federal Constitution requires a showing of actual or potential 'harm' to the child before a court may order visitation continued over a parent's objection – finds no support in this Court's case law. While the court recognizes the Federal Constitution certainly protects the parent/child relationship from arbitrary impairment by the State, see infra at 2071-2072, we have never held that the parent's liberty interest in this relationship is so inflexible as to establish a rigid constitutional shield protecting every arbitrary parental decision from

> any challenge absent a threshold finding of harm. The presumption that parental decisions generally serve the best interest of their children is found and clearly in the normal case the parent's interest is paramount. But even a fit parent is capable of treating a child like a mere possession. *Id.* at 2070-2071.

Justice Stevens went on to state that there is, at minimum, a third individual whose interests are implicated in every case to which the statute applied – the child.

> It has become standard practice in our substantive due process jurisprudence to begin our analysis with an identification of the fundamental liberty interests implicated by the challenged state action. My colleagues are of course correct to recognize that the right of a parent to maintain a relationship with his or her child is among the interest included most often in the constellation of liberties protected through the 14th Amendment. *Ante.* at 2059-2061.
>
> Our cases leave no doubt that parents have a fundamental liberty interest in caring for and guiding their children and of course finding privacy interest – except absent exceptional circumstances – in doing so without the undue interference of strangers to them and their child. *Id.* at 2071.

However, that was not the end of the discussion, for Justice Stevens concluded his dissent by stating that:

A parent's rights with respect to her child have thus never been regarded as absolute but rather are limited by the existence of an actual, developed relationship with the child and are tied to the presence or absence of some embodiment of family. These limitations have arisen, not simply out of the definition of parenthood itself, but because of this court's assumption that a parent's interest in a child must be balanced against the state's long-recognized interest as *parens patriae*. See, *E.G. Reno v. Flores*, 507 U.S. 292, 303-304, 113 S.Ct. 1439, 123 L.Ed. 2d 1 (1993); *Santosky v. Kramer*, 455 U.S. at 766, 102 S.Ct. 1388; *Parham*, 442 U.S. at 605, 99 S.Ct. 2493; *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 88 L.Ed. 645 (1944); and, critically, the child's own complementary interest in preserving relationships that serve her welfare and protection, *Santosky*, 455 U.S. at 760, 102 S.Ct. 1388. While this Court has not yet had occasion to elucidate the nature of the child's liberty interest in preserving established familial or family-like bonds, 491 U.S. at 130, 109 S.Ct. 2333 (reserving the question), it seems to me extremely likely that, to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interest be balanced in the equation. At a minimum, our prior cases recognizing that children are, generally speaking, constitutionally protected actors require that this court reject any suggestion that when it comes to parental rights, children are so much chattel. See *Ante*. at 2059-2060 (opinion of

> O'Connor, J., describing states' recognition of "an independent third-party interest in a child.") The constitutional protection against arbitrary state interference with parental rights should not be extended to prevent the states from protecting children against the arbitrary exercise of parental authority that is not in fact motivated by an interest in the welfare of the child. *Id.* at 2072.

In the instant case, Mr. Harris argues that LSA-R.S. 9:344A violates his constitutional rights as a parent. Mr. Harris has erroneously placed his concerns, his liberty interests, above those of the minor child, Camille.

Mr. Harris seems to argue that the State of Louisiana, by enacting La. R.S. 9:344, somehow burdened his fundamental right to make decisions with regard to child-rearing and family relationships. This is simply not the case. The statute is a narrowly-drawn statute granting only to the grandparents reasonable visitation rights to the child during the child's minority, if the court, in its discretion, finds that such visitation rights would be in the best interest of the child. The statute only applies if the non-custodial parent is deceased, interdicted or incarcerated.

This statute cannot be read or stretched in any way to be interpreted as granting unto grandparents the same rights and status as parents. Mr. Harris further argues that creating these rights usurps the inherent authority of a parent to raise his or her child in the manner which they see fit. Visitation does nothing of the sort. It only provides a bond and contact with the family of the deceased parent, just as if the deceased non-custodial parent were still alive and exercising his or her own visitation rights in the event of a divorce.

The compelling state interest is in maintaining the unity and sanctity of the child's *entire* family. This is especially true in Louisiana where ascendants as well as descendants owe one another the reciprocal duty of support, under certain circumstances.

The "historical, traditional and fundamental right to raise children free from state interference" is not in jeopardy here. The U.S. Supreme Court has always recognized that while parents should be generally free to exercise their parental rights in raising their children, that right is not an unfettered and unbridled right. The well-being of its children is a subject within the state's power to regulate. *Ginsberg v. New York*, 390 U.S. 629, 88 S. Ct. 1274, 1280, 20 L. Ed. 2d 195 (1968). Nor does Jeffrey Harris' fitness as a custodial parent have anything to do with the granting of grandparents' rights.

What Mr. Harris does not address are the liberty interests and the rights of association which his minor daughter, Camille, has *of right* and *should* be able to exercise with her deceased mother's side of the family. That part of her birthright is just as important to her as that of her father's side of the family. Just because she cannot articulate how important those bonds are to her at this point in her life makes them no less precious. Where else will she learn of her mother and her family, if not from the respondents and the extended Galjour family?

Indeed, Justice Stevens, in *Troxel*, pointed to the U.S. Supreme Court's decisions where minors were protected by the constitution and recognized as possessing constitutional rights. *Tinker v. Demoines Independent Community School District*, 393 U.S. 503, 506-507, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969), First Amendment right to political speech;

In re Gault, 387 U.S. 1, 13, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1957), due process rights in criminal proceeding. 120 S. Ct. at 2072.

Justice Stevens indicated further that:

> We should recognize that there may be circumstances in which a child has a stronger interest at stake than mere protection from serious harm caused by the termination of visitation by a "person" other than a parent. The almost infinite variety of family relationships that pervade our ever-changing society strongly counsel against the creation by this court of a constitutional rule that treats a biological parent – liberty interest in the care and supervision of her child as an isolated right that may be exercised arbitrarily. It is indisputably the business of the states, rather than a federal court employing a national standard, to assess in the first instance the relative importance of the conflicting interest that give rise to disputes such as this. Far from guaranteeing that parents' interests will be trammeled in the sweep of cases arising under the statute, the Washington law merely gives the individual – with whom a child may have an established relationship – the procedural right to ask a state to ask his arbitrator, through the entirely well-known best interest standards between the parents' protected interests and the child's. It seems clear to me that the due process clause of the 14th Amendment leaves room for states to consider the impact on a child of possibly arbitrary parental decisions that neither serve nor are motivated by the best interest of the child. 120 S.Ct. at 2073, 2074.

This is precisely the type of case this Court has before it today. The maternal grandparents have established a bond with Camille as described in detail throughout these proceedings. The existence of such a bond has never been disputed.

As Justice Kennedy in his dissent foreshadowed:

> Cases are sure to arise – perhaps a substantial number of cases – in which a third party, by acting in a care giving role over a significant period of time, has developed a relationship with the child which is not necessarily subject to absolute parental veto. See *Michael H. v. Gerald D.*, 491 U.S. 110, 109 S.Ct. 2333-105 L.Ed. 2d 91 (1989) (putative natural father not entitled to rebut state law presumption that child born in a marriage is a child of the marriage); *Quilloin v. Walcott,* 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed. 2d 511 (1978) (best interest standard sufficient in adoption proceedings to protect interest of natural father who had not legitimated the child); see also, *Lahr v. Robertson,* 463 U.S. 248, 261, 103 S.Ct. 2985, 77 L.Ed. 2d 614 (1983) (the importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in promoting a way of life through the instruction of children . . . as well as from the fact of blood relationship) (quoting *Smith v. Organization of Foster Families for Equality and Reform,* 431 U.S. 816, 844, 97 S.Ct. 2094, 53 L.Ed. 2d 14 (1977); in turn, quoting *Yoder,* 406 U.S. at 231-233, 92 S.Ct. 1526). Some

> preexisting relationships, then, serve to identify persons who have a strong attachment to the child with the concomitant motivation to act in a responsible way to insure the child's welfare. As the State Supreme Court was correct in acknowledging, those relationships can be so enduring that "in certain circumstances where a child has enjoyed a substantial relationship with a third person, arbitrarily depriving the child of the relationship could cause severe psychological harm to the child," *In re Smith,* 137 Wash. 2d at 20969 P.2d at 30; and harm to the adult may also ensue.

The Louisiana statute in question does not offend the notion of substantive due process because it is narrowly tailored to further the state's interest. The state's interest is one of further affirming strong families, continuing family contact upon the death of a parent and leaving that visitation to the discretion of the court for the court to determine what is in the best interest of the child. A similar constitutional challenge was unsuccessfully mounted against La. Civil Code Article 136(B), an article closely akin to La. R.S. 9:344A, the statute being challenged herein. Louisiana Civil Code Article 136 provides:

> (B) Under extraordinary circumstances, a relative, by blood or affinity, or a former step-parent or step-grandparent, not granted custody of the child, may be granted reasonable visitation rights if the Court finds that it is in the best interest of the child. In determining the best interest of the child, the Court shall consider: (1) The length and quality of the prior relationship between the child and the

> relative. (2) Whether the child is in need of guidance, enlightenment or tutelage which can best be provided by the relative. (3) The preference of the child if he is determined to be of sufficient maturity to express a preference. (4) The willingness of the relative to encourage a close relationship between the child and his parent or parents. (5) The mental and physical health of the child and the relative.

The Louisiana First Circuit Court of Appeal in *Reinhardt v. Reinhardt*, 97-1889 (La. App. 1 Cir. 9/25/98); 720 So.2d 78, *writ denied*, 98-2697 (La. 12/18/98), 734 So.2d 635, *certiorari denied*, 526 U.S.1114, 119 S. Ct. 1761, 143 L. Ed. 2d 792 (1999), when examining the constitutionality of Louisiana Civil Code Article 136(B), held that statutes are presumed to be valid. If possible, the constitutionality of a statute should be upheld and the burden of proof rests with the party attacking the statute. *Soloco, Inc. v. Dupree*, 97-1256 p. 3 (La. 1/12/98), 707 So.2d 12, 14.

The strict scrutiny test was applied to Article 136(B) which visitation was argued to be an impingement upon the *Reinhardt* defendant/appellant's parental rights. The *Reinhardt* Court in upholding Article 136(B), held that there was a compelling state interest in stabilizing broken or single parent families through visitation with extended family members.

The Court in *Reinhardt* recognized that the state has a substantial interest in encouraging beneficial extended family relationships with children and, in the absence of grandparent or family member visitation, a child's relationship with one side of their extended family may be lost. Without doubt,

the compelling state interest is the same under La. R.S. 9:344A as was found to exist under Louisiana Civil Code Article 136(B). For the same reasons, the Louisiana court's ruling regarding the constitutionality of La. R.S. 9:344A should not be disturbed.

The risk of harm discussed by Justice Kennedy and the child's liberty interest addressed by Justice Stevens in their thoughtful dissents do not conflict with the very narrow and limited ruling of the majority opinion in *Troxel* insofar as any interpretation of La. R.S. 9:344A would be concerned. Those two Justices' dissents, along with the majority opinion, delineate circumstances under which states would not be impermissibly interfering with parental rights. The Louisiana statute at issue falls within those lawful parameters.

Although the U.S. Supreme Court has not yet ventured down the child's rights path,[1] the state trial court below implicitly recognized the fundamental nature of a child's liberty interest in preserving established family or family-like bonds. Camille's liberty interest in preserving the bonds with her mother's family, especially given the fact that her mother is deceased, must not be ignored.

Legislatures all across the country over the course of last two decades have enacted laws which variously call for custody evaluations by mental health professionals, mandated mediation, and other court-ordered mechanisms when a minor child's living circumstances change due to a divorce. There is no less reason to believe that a child would experience a like or greater upheaval when a parent dies and

1. It has been reserved as a question in *Michael H. v. Gerald D.*, 491 U.S. 110, 109 S. Ct. 2333, 105 L. Ed. 2d 91 (1989).

the child is at risk of losing familial contact with the deceased parent's family. For the reasons cited above, the statute is constitutional on its face.

II.

THE STATUTE IS NOT UNCONSTITUTIONAL "AS APPLIED": THE RECORD BELOW REVEALS THAT PETITIONER DENIED HAVING A PROBLEM WITH THE GRANDPARENTS' VISITATION AND THAT EVERY CONDITION REGARDING VISITATION IMPOSED BY PETITIONER WAS GRANTED

Though not reached because of this Court's ruling that the Washington state statute was overly broad, some of the Justices seemed troubled by the fact that the trial court in *Troxel* granted the grandparents visitation when the parent did not want same. This is not an issue for this Court's consideration.

As recognized by the Court of Appeal in its decision, the conditions which Jeffrey Harris sought to impose upon the grandparents in the exercise of their visitation with Camille were all honored by the trial court. (Petitioner's *Writ of Certiorari*, Appendix A, page 17a). Those specific conditions, as demonstrated amply throughout the record, are referenced below. Thus, it cannot be said that the statute was unconstitutional, "as applied."

Although Jeffrey Harris testified that he had insisted on supervising the grandparents Pat and Gaston Galjour with their visitation *prior* to going to trial, he claimed his reason for doing so was because

> we were in litigation again or still. There have been child psychologists and all the child head doctors, counselors were involved and they were going to testify to this and that I didn't want them snatching the child and bringing her to a head shrink without my knowledge or permission or consent.

(Record, p. 160, lines 15-25.)

When Jeffery Harris was specifically asked,

> assuming that stipulation or that restriction is going to be placed by the Court on Pat and Gaston Galjour, then you don't have any fears, do you, about the way they treat your child? As far as restrictions, as far as the other restrictions we discussed or you have already testified about, there was no reason for you to restrict visitation and supervise visitation other than your concern about litigation; is that correct?

(Record, p. 160, lines 26-32; p. 161, lines 1-2.)

Mr. Pastuszek interjected, "I think we're off the stipulation. There's never been any reason to believe by Mr. Harris there was any physical harm brought to the child by either the maternal grandparents or Mark and Juanita. If that's what's being sought, I believe we'll stipulate to that." (Record, p. 161, lines 3-9.)

When asked about grandparents' weekend visitation, "How would you like that weekend defined? When would it begin and when would it end?" Jeffrey Harris replied,

"Pick her up Saturday morning and drop her off Sunday afternoon so she can have her afternoon meal, get ready for bed and ready for school the following day." (Record, p. 142, lines 23-32).

"What time Saturday morning?" "10:00 a.m." "What time would she be delivered Sunday afternoon?" "4:00 p.m." (Record, p. 143, lines 1-2.)

Mr. Harris also specified that he would like the visitation to take place on the third weekend of the month with the restrictions that Camille see no professionals except an emergency room physician, and that they call him on the way to the hospital (Record, p. 143, lines 3-17). When asked again as to what restrictions he would have with respect to the notification of the child being removed from the metropolitan area, he said, "I don't see any reason for her to leave the metropolitan area and I would like prior notice" (Record, p. 143, lines 31-32; p. 144, lines 1-11).

Mr. Harris also requested that he wanted the grandparents to ask him before they were to buy a major gift (Record, p. 145, lines 2-14). He also asked the Court to restrict the grandparents (or any family members) from taking the child to her mother's grave site, and that he (the father) make all major decisions as far as school, dance, religion, haircuts, fingernail polish (Record, p. 146, lines 4-13). "The only person to make Camille's major life's decisions shall be me." (Record, p. 147, lines 7-8.)

Mr. Harris continued with very precise conditions:

> I would like Camille in one bed. Part of the problem is she has five beds, four sets of disciplinarians, four sets of rules. When she visits,

> she should have a bed, should know where her bedroom is, not the couch at Mark and Juanita's, not on a boat, not in hammocks, this is my bed.

(Record, p. 161, lines 11-17.)

Further, when asked if he had any objection to the grandparents taking Camille to Eden Isles overnight, Mr. Harris stated, "I would like to know about it." The Galjours' attorney pressed for clarity: "It's my understanding that your concerns are you want to be notified ahead of time if they are going to take the child to spend the night on the way from Pat and Gaston's house in Metairie; is that correct, Mr. Harris?"

"Yes, ma'am. I would like to know where my child is and what would be done with her outside my presence." (Record, p. 161, lines 20-31.)

> I would like to know what they are going to do with my child, Miss Perrone. If she's going fishing in the boat, I'd like to make sure she wears a life jacket. I'd like to know where my child is in case I need to get her for any type reason.

(Record, p. 162, lines 4-9.)

The Court clearly was concerned about Mr. Harris' desires. "I'm worried about the father of the child. I'm interested in his feelings, what he wants" (Record, p. 146, lines 23-30).

The trial court then heard from the grandmother. When asked how much time the grandparents would like with

Camille, Pat Galjour replied, "I would like to have a lot of time, every other weekend, every weekend. We'd like some time in summer, like to see her during Christmas holidays, also love to take family vacations every summer." (Record, p. 165, lines 15-18.) When asked about weekend visitation, the grandmother wanted the weekend to start on Friday after school and continue to allow the grandparents to bring Camille to school on Monday morning. (Record, p. 165, lines 21-22.)

Mrs. Galjour also testified that both she and her husband, Gaston, were retired and had all the time in the world and could pick up Camille and take responsibility for all transportation (Record, p. 165, lines 23-29).

After hearing from both Mr. Harris and the grandmother, Pat Galjour, the trial court honored every single restriction and limitation which Jeffery Harris had requested when she made her ruling which was then reduced to a judgment, found at petitioner's *Writ of Certiorari*, Appendix B, pages 20a-24a.

Having implemented by way of judgment all of Jeffrey Harris' conditions and restrictions upon the grandparents' visitation, the trial court complied with the implied mandates of *Troxel* in according "at least some special weight to the parents' own determination". *Troxel,* 120 S. Ct. at 2062. For these reasons, Petitioners' writ of certiorari should be denied. The statute is constitutional "as applied".

III.

THIS CASE DOES NOT PRESENT WITH FAR-REACHING IMPLICATIONS

There is a third and final reason why this Court should not grant the petitioner's writ of certiorari. The *Troxel* case dealt with the interpretation of a Washington statute which was breathtakingly over broad. Any person at any time could conceivably ask for visitation rights as long as the person could show that it was "in the best interest of the child." Understandably, the Washington Supreme Court struck down the statute as unconstitutional.

In upholding the Louisiana statute in question, the Louisiana First Circuit Court of Appeal examined it in light of *Troxel*. The Louisiana statute is unique, however, in that the rights of visitation it grants operate coextensively with the obligations which grandparents have to support their descendants under other provisions of Louisiana law.

This interplay of various unique state laws which grant rights and confer obligations upon ascendants, *i.e.*, the grandparents, cannot be compared to the isolated overly broad Washington statute. Indeed, the implications of the *Galjour v. Harris* case do not reach any farther than the fingers of the Louisiana bayous.

The philosophical underpinnings of grandparent rights are founded in the notion that ascendants (grandparents) in this state have a duty to support their descendants in need. La. C.C. Art. 229 reads as follows:

> Children are bound to maintain their father and mother and other ascendants, who are in need, and the relatives in the direct ascending line are likewise found to maintain their needy descendants, this obligation being reciprocal. This reciprocal obligation is limited to life's basic necessities of food, clothing, shelter and health care, and arises only upon proof of inability to obtain these necessities by other means or from other sources.

In *Troxel,* there was no such duty referenced as part of Washington state law. Accordingly, this Court must recognize that Louisiana has placed such importance on its heritage of strong family ties that it has bound ascendants and descendants to support one another, throughout each other's lifetimes.

This alone provides a compelling reason to allow grandparents visitation rights if they are concomitantly financially responsible by law. This distinguishing factor was obviously not addressed in the *Troxel* decision; however, the Court in *Reinhardt, supra*, held that the State and ascendants have a legitimate and substantial interest to maintain extended family relationships through reasonable visitation. Further, *Reinhardt*, specifically referenced La. C.C. Article 229, the state-mandated support obligation of ascendants for their descendants in need.

Thus, even if this Court were to contemplate revisiting certain aspects of *Troxel*, the unique position of ascendants under Louisiana law should preclude this Court from considering same. Petitioner's writ should be denied.

CONCLUSION

Justice Stevens in *Troxel* cited U.S. Supreme Court precedent as authority for the proposition that the child has a constitutional liberty interest. Therefore, use of a balancing test is appropriate because there are generally comparable but competing interests in maintaining extended relationships, especially involving families from broken homes or single-parent homes.

The child's liberty interest and rights of association, especially in light of one parent's death, can and should be balanced with the interest of the surviving custodial parent and the grandparents who have a substantial familial relationship with the child, based upon a case-by-case inquiry. The surviving parent's liberty interest and the right of privacy to raise a child without interference by third parties should never be deemed absolute.

Accordingly, the Louisiana First Circuit Court of Appeal properly weighed all of the competing considerations raised in *Troxel*. Its decision should not be disturbed.

Respectfully submitted,

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